

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

11/29/84
29870

FILE: B-217085

DATE: November 28, 1984

MATTER OF: CDS, Inc.

DIGEST:

Protest that late best and final offer was improperly rejected is dismissed as untimely because it was received by GAO more than 10 working days after the protester received written notice from the agency of the rejection and the reason for it.

CDS, Inc. protests the rejection by the Department of the Army of its untimely second best and final offer submitted in connection with request for proposals (RFP) No. DAAK11-84-R-0038. CDS contends that the Army should have accepted its offer because it was sent the day before the due date by United States Postal Service Express Mail.

We dismiss this protest as untimely under our Bid Protest Procedures. The procedures provide that protests based on grounds other than improprieties which are apparent before bid opening or the closing date for receipt of initial proposals must be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1984).

Enclosed with CDS' protest was a letter dated September 27, 1984 from the agency which rejected CDS' second best and final offer because it was late. Consequently, CDS was aware of its basis for protest when it received the agency's letter. While the record does not indicate when CDS received the letter, it is reasonable to assume that receipt was within one calendar week. Grangeville Chamber of Commerce, B-215392, June 27, 1984, 84-1 CPD ¶ 682. CDS' protest to our Office was dated October 28 and was received on November 7, more than a month after it can be

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assumed that CDS knew the basis for protest. Therefore, the protest will not be considered on its merits and is dismissed.

Harry R. Van Cleve
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General Counsel